



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNDC, O

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The facts are not in dispute. The tenancy began on July 1, 2014 and was set to run for a fixed term ending on June 30, 2015. The tenancy ended on February 28, 2015 when the tenant ended the tenancy. The tenancy agreement contains a liquidated damages clause which provides as follows:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$805.33 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The tenant paid the landlord \$805.33 in liquidated damages but now seeks to recover that sum as he believes it to be a penalty. The tenant testified that he does not believe the landlord advertised the unit or showed the unit to prospective tenants and that he placed an advertisement on Craigslist and found a suitable tenant who he presented to the landlord.

The landlord testified that they advertised the unit, showed the unit to prospective tenants and performed other work relative to qualifying the new tenant. The landlord provided a document entitled "marketing Liquidated Damages Breakdown" in which it shows the costs of marketing per in relation to the average monthly turnover rate (\$433.33), the approximately 6 showings it

usually takes to secure a new tenant (\$270.00), the time spent qualifying the new tenant (\$90.00) and performing a record check (\$12.00). These amounts add up to \$805.33.

### Analysis

The common law around liquidated damages requires that such a provision be a genuine pre-estimate of anticipated losses in the event of a breach of the agreement. The common law does not permit parties to impose liquidated damages which are a penalty. When a tenant alleges that a liquidated damages provision is a penalty, the landlord has the burden of proving that the amount is a genuine pre-estimate of losses. The landlord is not required to prove that the time and money estimated were actually expended; they only need to prove that the amount of the damages does not exceed the pre-estimate.

I find that the landlord has proven that the liquidated damages are a genuine pre-estimate. The landlord's breakdown shows that the amount charged represents actual costs typically incurred by the landlord to re-rent a unit upon vacancy. While the landlord may not have incurred all those costs on this occasion, and I make no finding on that issue, I accept that this is the average cost and therefore a genuine pre-estimate.

Because I have found that the liquidated damages amount is a genuine pre-estimate, the tenant's claim must fail. The tenant was fully aware at the time he entered into the agreement that he would have to pay the landlord's expected costs to re-rent should he end the fixed term prior to its expiry yet he chose to end the tenancy. I find that the landlord is entitled to liquidated damages and I dismiss the tenant's claim.

### Conclusion

The claim is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 11, 2015

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Residential Tenancy Branch

